



RHODE ISLAND

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

DIVISION OF MARINE FISHERIES

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Regulatory Analysis

**Proposed Amendments to RIDEM Marine Fisheries
Regulations “Part 6 – General Equipment Provisions”**

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INTRODUCTION

The Rhode Island Department of Environmental Management (Department) Division of Marine Fisheries (DMF) is proposing regulatory changes to 250-RICR-90-00-6 – General equipment Provisions. Specifically, DMF is proposing the following regulatory amendments:

- 1) Amend the pot and buoy identification requirements to remove statutory reference so they apply to recreational pots (6.4(B)(2)).
- 2) Amend the general pot and buoy regulations to require an escape vent on all pots and traps other than lobster, Jonah crab, black sea bass, and scup (6.4(7)). The proposed language also includes two exemptions for smaller pots and traps or pots and traps using smaller mesh.
- 3) Amend the general pot and buoy regulations to require valid lobster trap tags on all pots and traps taking any crab species, except for green crabs.

This regulatory analysis has been prepared to estimate the impact of the proposed regulatory changes pursuant to the Administrative Procedures Act (APA), R.I. Gen. Law § 42-35-2.9.

For all proposed regulatory amendments, fishing behavior, market conditions, or market changes, cannot be traced in this analysis to these regulations. This is due to the fact that the costs and/or benefits generated from a commercial fishing business, or commercial harvester, are largely dependent on a wide variety of variables including, but not limited to: license type; license endorsement(s); effort (full or part-time); target species; market prices for target species; state quotas; possession limits; gear type; fishing mode (shore or vessel); vessel size; crew; upfront investments for vessel, gear, and administrative tasks; possession of a federal permit; seasonality of fisheries; weather; and catastrophic events. As a result, it is impossible to quantitatively estimate costs and/or benefits to stakeholders under the proposed policy alternatives and this regulatory analysis is strictly qualitative in nature.

BACKGROUND

Identification of Pots and Buoys

The DMF received comments from the Department's Division of Law Enforcement (DLE) that they were encountering recreational pots and traps with no identification making enforcement of rules a challenge. DLE requested that the statutory reference be removed from rule making the rule applicable to both recreational and commercial fisheries.

Escape Vents for Pots and Traps Other than Lobster, Jonah crab, Black Sea Bass, and Scup

The DLE is also encountering pots and buoys with no escape vents. The current rule only requires escape vents for Lobster, Jonah crab, Black Sea Bass, and Scup. This leads to unvented traps being utilized by harvesters fishing for other species. This adds to the difficulty DLE has in identifying the type of trap and the type of catch they are authorized to harvest. This also results in these unvented traps retaining unintended bycatch.

Lobster Trap Tag Requirements for Pots and Traps Taking Crabs

An industry proposal was submitted to the DMF requesting that valid lobster trap tags be required on all pots and traps taking any crab species, except for green crabs. The rationale provided stated that pots and traps used to catch crabs are also capable of catching lobsters, therefore, they should be required to have lobster trap tags.

STATEMENT OF THE PROBLEM

Identification of Pots and Buoys

The DMF current rule makes reference to R.I. Gen. Laws § 20-4-7 – Commercial Fisheries. Therefore, including the reference makes the rule only apply to commercial fishing, which presents enforcement challenges for DLE.

Escape Vents for Pots and Traps Other than Lobster, Jonah Crab, Black Sea Bass, and Scup

Escape vents are currently only required for lobster, Jonah crab, black sea bass, and scup pots and traps. By not requiring escape vents for all pots and traps, harvesters can simply fish an unvented pot and call it a crab pot, even though they are catching and harvesting other species such as lobster, Jonah crab, black sea bass, and scup. These pots and traps are capable of catching lobsters and may also catch other unintended bycatch.

Lobster Trap Tag Requirements for Pots and Traps Taking Crabs

Lobster trap tags are currently only required for pots and traps retaining lobsters. Other pots and traps, such as crab pots, are also capable of catching lobsters but have no requirement for lobster trap tags.

SCOPE OF THE REGULATORY ANALYSIS

The proposed regulatory amendments are for 2026 only. The proposed regulatory amendments are expected to be re-evaluated annually and subject to amendments each year. As a result, the scope of this analysis is discrete and limited to 2026.

The fiscal note associated with the proposed policy alternatives presents three years of fiscal impact even though these policies are expected to be re-visited annually.

BASELINE

The baseline for this analysis, or what we anticipate would happen with no regulatory change, is maintaining the current statutory reference in rule.

STAKEHOLDERS AFFECTED

The stakeholders affected by the proposed regulatory amendments and policy alternatives would be all stakeholders who currently set pots or traps in RI state waters or plan to do so in the future.

COSTS AND BENEFITS

The policy alternatives presented in this regulatory analysis are being put forward to satisfy R.I. Gen. Laws § 42-35-2.9 Regulatory Analysis.

For the proposed regulatory amendments and the alternatives considered, data were limited because data does not exist on the number of recreational harvesters fishing with pots and traps, the number of harvesters currently fishing unvented pots and traps, or how many pots and traps that do not have a lobster trap tag requirement are catching lobsters. As a result, costs and benefits in this analysis are largely qualitative.

Additionally, the costs and/or benefits generated from the proposed regulatory amendments and alternatives may be largely dependent on fishing behavior. Changes in fishing behavior may be impacted by: effort (full or part-time); market prices; possession limits; gear type; fishing mode (shore or vessel); vessel size; crew; upfront investments for vessel, gear, and administrative tasks; seasonality of fisheries; weather; and catastrophic events. As a result, it is impossible to quantitatively estimate costs and/or benefits to stakeholders under the proposed policy alternatives and this regulatory analysis is largely qualitative in nature.

The proposed regulatory amendments include:

- 1) Amend the pot and buoy identification requirements to remove the statutory reference so they apply to recreational pots.
- 2) Amend the general pot and buoy regulations to require at least one (1) rectangular escape vent with an unobstructed opening measuring not less than two inches by five and three quarters inches (2" x 5-3/4") or one (1) circular escape opening that must be a minimum of two and one half inches (2 1/2") in diameter on all pots and traps other than lobster, Jonah crab, black sea bass, and scup (6.4(7)). Pots and traps not exceeding twenty four inches (24") per side or with a mesh size not exceeding one inch (1") are exempt from this requirement but may not be used to harvest lobster, jona crab, black sea bass, and scup.
- 3) Amend the general pot and buoy regulations to require valid lobster trap tags on all pots and traps taking any crab species, except for green crabs.

Identification of Pots and Buoys

Should the proposed regulatory amendment 1) be adopted, there could be a cost to all stakeholders who currently set recreational pots in RI state waters or plan to do so in the future. Because the current statutory reference falls under the commercial fisheries section of statute, recreational harvesters have not been required to mark their pots with buoys and identification. There will be a cost to harvesters who may need to purchase buoys and tags that contain identification information.

There will be a benefit to DLE by allowing them to identify the owner of recreational pots and enforce recreational regulations. There will also be a benefit to many fisheries stocks by having added enforcement of recreational rules.

The following are proposed as regulatory alternatives to regulatory amendment 1):

- a) Amend the pot and buoy identification requirements to remove the statutory reference so they apply to newly set recreational pots.
- b) Do not remove the statutory reference.

Should the proposed regulatory alternative a) be adopted, there would be less of a cost to stakeholders who currently set recreational pots in RI state waters or plan to do so in the future compared to the proposed regulatory amendment. Only those stakeholders who plan to set pots in the future would be impacted. There would be a loss to DLE by preventing them from identifying the owner of recreational pots and enforce recreational regulations. There would be no way for DLE to enforce this regulatory alternative as they would have no mechanism for knowing what pots/traps were “newly set” versus those that were not. There will also be a loss to many fisheries stocks by having reduced enforcement of recreational rules.

Should the proposed regulatory alternative b) be adopted, there would no costs stakeholders who currently set recreational pots in RI state waters or plan to do so in the future compared to the proposed regulatory amendment and regulatory alternative a). There would be a loss to DLE by preventing them from identifying the owner of recreational pots and enforce recreational regulations. There will also be a loss to many fisheries stocks by having reduced enforcement of recreational rules.

Escape Vents for Pots and Traps Other than Lobster, Jonah Crab, Black Sea Bass, and Scup

Should the proposed regulatory amendment 2) be adopted, there could be a cost to all stakeholders who currently set unvented pots and traps in RI state waters or plan to do so in the future. Because marine fisheries regulations currently only require trap and pot escape vents for lobster, Jonah crab, black sea bass, and scup, harvesters have not been required to have escape vents in their pots with buoys if they are not fishing lobster, Jonah crab, black sea bass, or scup pots and traps. There will be a cost to harvesters who may need to install escape vents on currently unvented pots and traps. There may also be a cost to stakeholders who fish smaller exempt pots or traps but would be unable to retain lobster, Jonah crab, black sea bass, and scup.

There will be a benefit to DLE by allowing them to identify the type of pot or trap by the size of the escape vent. This will inform DLE what species the pot, trap, or harvester is targeting. There will also be a benefit to many fisheries stocks by having added enforcement allowing unintended bycatch to escape pots and traps such as sub-legal lobsters.

The following are proposed as regulatory alternatives to regulatory amendment 2):

- a) Amend the general pot and buoy regulations to require a circular 2” escape vent on all pots and traps other than lobster, Jonah crab, black sea bass, and scup. Exempt pots and traps not exceeding twenty four inches (24”) per side or with a mesh size not exceeding one inch (1”) but do not allow the retention of lobster, Jonah crab, black sea bass, and scup.
- b) Do not require escape vents.

Should the proposed regulatory alternative a) be adopted, there would be less of a cost to stakeholders who currently set unvented pots and traps in RI state waters or plan to do so in the future compared to the proposed regulatory amendment. By requiring a 2” escape vent,

harvesters would retain more catch in their traps. There will be a loss to many fisheries stocks by having increased bycatch.

Should the proposed regulatory alternative b) be adopted, there would no costs stakeholders who currently set pots and traps in RI state waters or plan to do so in the future compared to the proposed regulatory amendment and regulatory alternative a). There would be a loss to DLE by preventing them from identifying what species the pot, trap, or harvester is targeting. There will also be a loss to many fisheries stocks by having additional bycatch.

Lobster Trap Tag Requirements for Pots and Traps Taking Crabs

Should the proposed regulatory amendment 3) be adopted, there could be a cost to all stakeholders who currently set pots and traps to harvest species other than lobster in RI state waters or plan to do so in the future. Because marine fisheries regulations currently only require trap tags for lobster, harvesters have not been required to have trap tags on their pots and traps if they are not fishing lobster. There will be a cost to all harvesters who currently do not have a lobster trap tag allocation (LTA) and therefore would be unable to fish pots and traps. There will also be a cost to all harvesters who currently do have an LTA as they will have to allocate a portion of their tags to pots and traps other lobster.

There will be a benefit to DLE by allowing them to identify all pots or traps by the lobster trap tags. There will also be a benefit to many fisheries stocks by having less pots and traps in the water and less bycatch.

The following are proposed as regulatory alternatives to regulatory amendment 3):

- a) Amend the general pot and buoy regulations to require valid lobster trap tags on all pots and traps taking any crab species, except for green crabs, for anyone without a fishing history of pots and traps prior to 2026.
- b) Develop a trap tagging program where harvesters would be required to get trap tags specific to the species they intent to harvest.

Should the proposed regulatory alternative a) be adopted, there would be less of a cost to stakeholders who currently set pots and traps in RI state waters or plan to do so in the future compared to the proposed regulatory amendment. By requiring pots and traps to have valid lobster trap tags for anyone without a fishing history of pots and traps prior to 2026, all stakeholder who do have a fishing history would be exempt from this requirement. There would less of a biological benefit to fisheries stocks compared to the proposed regulatory alternative a) as there would be increased pots and traps in the water and increased bycatch.

Should the proposed regulatory alternative b) be adopted, there would be less of a cost to stakeholders who currently set pots and traps in RI state waters or plan to do so in the future, compared to the proposed regulatory amendment and regulatory alternative a). Stakeholders would still have to acquire tags for all pots and traps, but no harvesters would be prevented from fishing pots and traps. There would be an increased cost the Division in having to develop this tagging program and administer it. There will also be a loss to many fisheries stocks by having increased pots and traps in the water and increased bycatch.